

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

AMAZON.COM SERVICES LLC,)	
)	
Employer,)	
)	
and)	Case No. 29-RC-288020
)	
AMAZON LABOR UNION,)	
)	
Petitioner.)	

AMAZON.COM SERVICES LLC’S MOTION TO REOPEN THE RECORD

Pursuant to Section 102.65(e)(1) of the National Labor Relations Board’s Rules & Regulations, *see* 29 C.F.R. § 102.65(e)(1), Amazon.com Services LLC (“Amazon” or “Employer”), respectfully requests that the Executive Secretary reopen the record in the above-captioned proceeding for the limited purpose of receiving new evidence that was in existence at the time of the hearing, but for which the exact source and details were unknown to Amazon prior to the date the hearing record closed. Such evidence is directly relevant to show that Amazon would have prevailed on certain of its objections to the outcome of the election in this case, had such evidence been presented at the post-election objections hearing.

This evidence includes: (1) an admission by Petitioner Amazon Labor Union’s (“ALU” or “Union”) officers that their representation petition did not meet the National Labor Relations Board’s (“Board”) longstanding 30% showing of interest requirement, yet the Board processed it anyway; (2) the ALU’s failure to file legally-required Labor Management Reporting and Disclosure Act of 1959 (“LMRDA”) forms deprived Amazon employees of learning important financial and organizational information about the ALU prior to the election; (3) the ALU’s failure to abide by the LMRDA resulted in employees being unable to discern whether the ALU’s claims that it was supported by other unions was factual or not; and (4) admissions and evidence that ALU

organizers Cassio Mendoza and Pasquale Cioffi were agents of the ALU during the critical period. This Motion is proper and timely under Section 102.65(e)(2) of the Rules, which provides that “[a] motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.” *See* 29 C.F.R. § 102.65(e)(2).

I. PROCEDURAL AND FACTUAL HISTORY

A. The ALU’s Representation Petition and Insufficient Showing of Interest¹

The ALU filed its petition in Case 29-RC-288020 on December 22, 2021. *See Exhibit A.* The Union sought an election in a bargaining unit comprised of all full-time and regular part-time fulfillment center employees working at Amazon’s JFK8 Fulfillment Center (“JFK8”). The ALU asserted in the petition that there were a total of 5,000 employees in the proposed bargaining unit. *Id.* The Union also publicly stated that it was “calling on” the Board to relax its longstanding requirement that a representation petition be supported by a 30% showing of interest. Amazon formally challenged the ALU’s showing of interest, making clear that the Board should not depart from its 30% showing of interest requirement in evaluating the petition. *See Exhibits B, C.*

On January 26, 2022, Region 29 (“Region”) notified the parties that the Union had met the 30% showing of interest requirement and the Region would continue processing the petition. Amazon timely served the Excelsior List on February 22, 2022. The Excelsior List identified a total of 8,325 eligible voters, far more than the 5,000 claimed by the ALU in the petition.

The election occurred at the end of March 2022. The Tally of Ballots also indicated a total of 8,325 eligible voters. *See Exhibit D.*

¹ As Amazon discusses the history of this case at length in its post-hearing brief, exceptions, and request for review, Amazon hereby incorporates by reference those discussions of the procedural and factual history herein.

B. Amazon's Objections

Amazon timely filed its Objections to the Results of the Election on April 8, 2022. *See Exhibit E.* Amazon's 25 objections included, among other issues, the ALU's insufficient showing of interest (and the Board's related improper processing of the petition), its failure to file any legally required LMRDA filings, misrepresentations regarding dues and which union would represent the bargaining unit, and that ALU officers and agents, including Mendoza and Cioffi, engaged in countless instances of objectionable misconduct that destroyed laboratory conditions.

On April 29, 2022, Regional Director Cornele Overstreet set all of Amazon's objections for a hearing, which took place by videoconference on various days from June 13, 2022, to July 18, 2022. *See Exhibit F.* Over the course of the hearing, Amazon was barred from putting on, and discovering, any evidence supporting objections 3-5—which dealt with Region 29's improper handling of the petition and relaxation of the Board's 30% showing of interest rule. *See, e.g.,* Tr. 3181:5-10; 3665:6-3668:11; 3689:12-3695:9; 4134:17-20; 4276:8-24; 4278:9-4279:17. Amazon was also prevented from putting on any evidence in support of objections 18 and 21, both of which alleged that the ALU's failure to abide by the LMRDA concealed critical financial and membership information from employees with the intent to deprive employees of that information prior to the election. *See, e.g.,* Sub. Tr. 16:21-17:21; 4282:21-25; 4284:7-10; *see also Exhibit E.*

The Hearing Officer released her Report on Objections on September 1, 2022, in which she recommended overruling all of Amazon's objections. *See Exhibit G.* Among her legally flawed determinations was that Cassio Mendoza was not an agent of the ALU. *Id.* This is significant because Mendoza, in front of other voters, engaged in objectionable harassment, threats, and retaliation against other employees for refusing to support the ALU. EMP 0905; Tr. 4028:17-4031:11. She also found that Cioffi – who admitted at the hearing that he personally

“flipped 400-500 votes from no to yes” – was not an agent of the ALU. *Id.*; *see also* Tr. 4949:12-24; 4955:19-21. Again, the Hearing Officer ruled that Cioffi was merely a supporter of the Union, and thus his conduct was not attributable to the ALU. *Id.* This is crucial and outcome altering, as the Tally of Ballots reflects that these 500 votes would have made the 67 challenged ballots determinative. *See Exhibit D.*

Amazon filed Exceptions to the Hearing Officer’s Report on September 23, 2022, and on January 11, 2023, Regional Director Overstreet issued his Decision and Certification upholding all of her recommendations. Amazon requested Board review on February 9, 2023.

C. The ALU Democratic Reform Caucus’ Lawsuit Against the ALU and Christian Smalls

On July 10, 2023, ex-ALU officers and members, including Mendoza and Cioffi, filed a lawsuit against the ALU and its President, Christian Smalls (the “Lawsuit”). *See Exhibits H, I.* The Lawsuit stems from Smalls’ and the ALU’s breaches of the ALU Constitution, among other things, and alleges violations of the LMRDA. *Id.* The Lawsuit follows a disingenuous attempt at mediation. *See Exhibit J.*

The Lawsuit provides several key admissions relevant to Amazon’s objections. For instance, the Lawsuit admits that not only was there a total of 8,325 eligible voters, but that the ALU submitted between 2,200 and 2,300 authorization cards from employees at all four Staten Island facilities: JFK8, LDJ5, DYY6 and DYX2. While the first petition filed with the Region sought a bargaining unit comprised of all four buildings, the operative petition in this case excluded the latter three buildings. The Lawsuit asserts:

[o]n October 25, 2021, the ALU organizers submitted the signed authorization cards of approximately 2,000 JFK8 employees to the NLRB and requested approval of a workplace election. On November 12, 2021, the NLRB solicited withdrawal of ALU’s application on the ground that the showing of interest was insufficient. Shortly thereafter, about a dozen union organizers resumed tabling to gather more

signed authorization cards. On December 22, 2021, ALU submitted between 200 and 300 additional authorization cards to NLRB relating to JFK8.

See Paragraphs 17 – 20 to Exhibits H, I.

This assertion is direct evidence supporting Amazon’s objections 3-5, which Amazon was barred from discovering or presenting evidence on during the hearing. *See, e.g.*, Tr. 3181:5-10; 3665:6-3668:11; 3689:12-3695:9; 4134:17-20; 4276:8-24; 4278:9-4279:17. This assertion confirms what Amazon has alleged since the petition was filed: not only did the ALU misrepresent, to the Board, the size of the unit by over 3,000 employees, but it also clearly did not meet the Board’s required 30% showing of interest. This admission establishes that Region 29 allowed the petition to proceed to an election knowing 30% of the JFK8 workforce did not support it, proving Amazon’s objection 3-5.

Additional allegations in the Lawsuit support Amazon’s LMRDA objections. Those allege that the ALU’s failure to timely file LMRDA disclosures denied voters their right and ability to assess the truth and accuracy of the ALU’s financial backing, financial condition, structure, and related representations. The Lawsuit asserts that:

[o]n December 9, 2022 [months after the election], Constitution 3 (Ex. C) was presented to the membership at an open meeting of the Executive Board. Only about 13 people from a total potential membership of 10,000 were in attendance. Smalls informed the membership that Constitution 3 had been adopted, and that the union would follow it from that point on. One member asked if there would be a vote on the adoption of the new Constitution. The President said that there would not be.

See Paragraph 61 to Exhibits H, I.

The Lawsuit also alleges that: the ALU’s President, on May 8, 2023, stated that members must pay “voluntary” dues, when the Union promised during the campaign that no one would have to pay dues until after the Union secured a collective bargaining agreement with Amazon (*see Exhibit 8 to Exhibits H, I*), which supports Amazon’s objection 14; the Constitution that was

eventually filed with the Union’s June 2022 LM-1 may have been a fraudulent, non-official Union Constitution (*see Exhibits K, L*); and the ALU’s failure to make legally required LMRDA filings was intentional, done to exploit voter confusion, and permitted the ALU to change its foundational documents as it saw fit (*see Exhibits H, I*). Paragraph 65 directly supports Amazon’s objection 18, as it acknowledges that several members of the ALU conducted “worker organizing training at meeting halls borrowed from other local unions.” Crucially, Amazon could not introduce testimony or evidence on this objection. *See Exhibits E, G*; Tr. 158:6-11; 878:18-879:8; 2936:19-2939:24; 3133:3-16; 3134:20-3135:2.

Mendoza admits in the Lawsuit that he was a member “of the initial Executive Board created at the time that the ALU was founded, or [was] appointed to fill a vacancy in an officer position, and served in that position at various times...” *See Paragraph 3 to Exhibits H, I*. Additionally, the Lawsuit indicates the ALU executive board held a board meeting on June 27, 2022, where meeting minutes show that it discussed paying Cioffi for his organizing efforts. *See Exhibit 4 to Exhibits K, L*.

II. AUTHORITY FOR REOPENING THE RECORD

After a hearing, Board Rules allow augmentation of the record where there is newly discovered evidence. Specifically, 29 C.F.R. § 102.65(e)(1) provides:

A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record... A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing de novo, the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the Regional Director or the Board believes should have been taken at the hearing will be taken at any further hearing.

Newly discovered evidence is evidence in existence at the time of the hearing that could not be discovered at that time by the exercise of reasonable diligence. *Point Park University*, 344 NLRB 275, 276 (2005). A motion to reopen the record shall be filed promptly upon discovery of the evidence sought to be adduced. *See* 29 C.F.R. § 102.65(e)(2).

Special circumstances allow for reopening the record pursuant to Section 102.65(e)(1). An abuse of Board process is an extraordinary circumstance demanding the record be reopened. *Suburban Newspaper Publications, Inc.*, 230 NLRB 1215, 1217 (1977). Another instance is when a misrepresentation prevents the argument or facts from being offered during the hearing. *Automatic Heating & Service Co.*, 194 NLRB 1065, 1972 WL 24744 (1972).

Changed circumstances warrant the reopening of the record when evidence is presented to the Board that establishes extraordinary circumstances, newly discovered evidence, or previously unavailable evidence. *Seton Company*, 332 NLRB 979 fn. 1 (2000). Section 102.65(e)(3) of the Board's Rules further requires the reopening of the record for changed circumstances, as it explicitly acknowledges that changed circumstances and/or newly discovered evidence are both valid bases to reopen the record or reconsider the decision. *See* 29 C.F.R. § 102.65(e)(3). Further, the burden to prove changed circumstances "is not an onerous one." *Wolf Creek Nuclear Operating Corp.*, 365 NLRB No. 55 fn.7 (2017).

III. ARGUMENT

Here, Amazon has obtained new evidence that satisfies the Board's requirements for reopening the record. Specifically, allegations and admissions in the Lawsuit support that: (1) the ALU submitted between 2,200 and 2,300 authorization cards from employees at all four facilities in Staten Island, not just JFK8 (which was the only petitioned for facility), which is well short of the 2,497 valid authorization cards needed for a 8,325 person bargaining unit, and thus failed to

meet the Board's required 30% showing of interest, yet the Board processed the petition anyway; (2) the ALU's failure to file legally-required LMRDA forms prevented Amazon employees from learning about the ALU, thereby unlawfully permitting the ALU to change its Constitution as often as it wanted without any safeguard or notice;² (3) the ALU's failure to file legally-required LMRDA forms was intentional and done to confuse voters what union the ALU really was, i.e., whether the ALU was supported or backed by another union(s); (4) Cassio Mendoza was an officer and agent of the ALU throughout the critical period; and (5) Pasquale Cioffi was an agent of the ALU throughout the critical period.

The newly discovered evidence was not presented previously because Amazon was prevented by the Hearing Officer from discovering or adducing this evidence until it became public in July 2023, almost a full year after the record closed. If adduced and credited, this additional evidence directly relates to, and helps prove several of Amazon's objections, which is a special circumstance to reopen the record. Amazon submits this Motion promptly and without unreasonable delay, as Amazon has been waiting for the Union to file its answer or motion to dismiss before filing. *See Sunshine Piping*, 351 NLRB 1371 (2007); *YWCA of Metropolitan Chicago*, 235 NLRB 788 (1978). However, as of the date of this filing, the Union has made no such filings and thus Amazon submits this Motion to avoid any unreasonable delay or prejudice.

² To prevent material representations to employees, the LMRDA requires all unions purporting to represent private sector employees to file, among other things, detailed financial reports. 29 U.S.C. §§ 431-432. As acknowledged by the LMRDA, these disclosures are necessary to eliminate or prevent improper practices on the part of labor organizations, their officers, and their representatives, and to protect employees from the activities of labor organizations. *Id.* § 401(b)-(c). Among other things, the ALU's LMRDA violations, coupled with its late hour promise of free union representation (*see* EMP 290), allowed it to make promises regarding its dues structure in a way that deprived Amazon of the ability to effectively respond, and denied employees the opportunity to assess the credibility of the promise.

A. The Lawsuit Concedes that the ALU Never Submitted a Sufficient Number of Valid Authorization Cards to Satisfy the Board’s Mandatory 30% Rule, Proving Objections 3, 4, and 5

During the hearing, Amazon was prevented from litigating objections 3-5, in direct contrast to Regional Director Overstreet’s direction that the Hearing Officer receive evidence regarding the Region’s “failure to protect the integrity and neutrality of its procedures.” *See Exhibits E, F*. Had Amazon been permitted to develop a record on objections 3-5, Amazon would have elicited the evidence contained in the Lawsuit establishing that Region 29 permitted the petition to proceed without the requisite 30% showing of interest. For example, when Amazon asked Spence during the objections hearing if “the ALU collect[ed] any authorization cards after December 22, 2021” the Hearing Officer sustained objections to the introduction of such testimony, stating “there should not be any testimonial listed regarding the showing of interest.” Tr. 4341:4-22.

But paragraphs 17-21 of the Lawsuit’s complaint admit exactly what Amazon was seeking to discover, namely, that Region 29 processed the petition despite the ALU **not** submitting enough valid authorization cards to meet the Board’s required 30% showing of interest for a bargaining unit consisting of 8,325 eligible voters. This evidence proves Amazon’s objections 3-5, each of which Regional Director Overstreet said could “be grounds for overturning the election if introduced at a hearing.” *See Exhibit F*.³

³ As Amazon has argued throughout this case, objections 3-5 do not seek to directly challenge whether the ALU was legally permitted to proceed to an election with less than a 30% showing of interest. The Hearing Officer’s and Regional Director’s repeated contentions that this issue is not litigable miss the point of Amazon’s objections. The point in making the objections was to allege that by allowing the ALU to proceed to an election with less than a 30% showing of interest (which the Lawsuit confirms was the case), at the same time that the then-fledgling ALU was issuing public calls for the Board to relax its rules and help the ALU organize JFK8, the Region failed to uphold the integrity of its procedures and lent a false sense of legitimacy to the ALU’s organizing efforts. That allegation—which Amazon has consistently articulated at every stage of the objections procedure—is most certainly litigable, and it was improper for the Regional Director to uphold the Hearing Officer’s refusal to permit litigation on an inaccurate re-characterization of what objections 3-5 are really about.

B. The Lawsuit Provides Newly Discovered Evidence Proving Objections 14, 18, and 21

The Lawsuit proves Amazon’s objections that the ALU violated the LMRDA, and that those violations interfered with—indeed, were calculated by the Union to do so—employees’ choice in the representation election. As Amazon noted in its objections, labor organizations are not immune from public disclosure and employee-union transparency, and the ALU’s failure to file any foundational documents and LM filings, as required by the LMRDA, coupled with its late-hour promise of free union representation, allowed it to make promises regarding its dues structure in a way that denied employees the opportunity to assess the credibility of the promise. *See Exhibit E* (objections 14, 18, 21). Moreover, the ALU intentionally did not file required LMRDA forms, which would have provided employees critical financial information about the Union prior to the election. *See* Tr. 4282:21-4283:18; EMP 726.

This failure to timely file a LM-1 allowed the Union to proliferate material misrepresentations to employees—usurping the laboratory conditions necessary to ensure a “free and untrammled” election. *See General Shoe*, 77 NLRB 124, 126 (1948). Had the ALU complied with the LMRDA, for example, employees would have ascertained their obligations surrounding dues. Instead, by not filing these required public disclosures, the ALU was free to change its messaging on a whim to influence employees to vote for the ALU, which it did by promising employees shortly before the vote that they would not have to pay dues until after the Union secured a contract. The newly discovered evidence shows exactly this, as the ALU’s President now claims that members must pay voluntary dues. *See Exhibit 8 to Exhibits H, I*. In an exhibit to the Lawsuit’s complaint, President Smalls told one of the named plaintiffs that “[i]f you haven’t paid voluntary dues you’re not a member bottom line that’s in the constitution...” *Id.* By refusing to file legally-mandated LMRDA documents, the ALU knowingly, and intentionally, mislead

voters with respect to critical foundational information about the Union's finances, structure, and dues obligations, and thereby destroyed laboratory conditions necessary for a free, fair, and uncoerced election. This was objectionable conduct.

Additionally, several declarations filed in the Lawsuit assert that the Constitution that was eventually filed with the Union's June 2022 LM-1 may have been a fraudulent, non-official Union Constitution. *See Exhibits K, L, M, N*. If true, this is a separate and independent violation of the LMRDA, which further supports Amazon's objections that the ALU intentionally mislead voters with respect to critical foundational information about the Union's finances, structure, and dues obligations.

The Lawsuit further provides newly discovered information as to Amazon's objection 18. Specifically, paragraph 65 of the Lawsuit's complaint acknowledges that several ALU members conducted "worker organizing training at meeting halls borrowed from other local unions." A recently published article quotes Teamsters President Sean O'Brien confirming this, as he says that, throughout the critical period, "[t]he Teamsters provided meeting space and guidance for the ALU." *See Exhibit O*.

Throughout the hearing, Amazon was barred from introducing testimony or documentary evidence which would have shown that the ALU's late-hour promise of support from other unions, when coupled with its failure to file any LMRDA required forms, deprived employees of the ability to determine which labor organization would be representing them. Tr. 158:6-11; 878:18-879:8; 2936:19-2939:24; 3133:3-16; 3134:20-3135:2; *see also Exhibit E*. The newly discovered admissions directly supports Amazon's objections. By using the union halls of other unions, such as the Teamsters, during the critical period, employees were led to believe the ALU's campaign

claims that it was backed by or affiliated with other unions that were not actually named on the ballot. This was objectionable misconduct.

C. The Lawsuit Confirms that Cassio Mendoza and Pasquale Cioffi were Agents of the ALU, Proving Objections 10, 13, 16, 18, and 25

The Lawsuit proves that both Cassio Mendoza and Pasquale Cioffi were agents of the Union throughout the critical period. This is significant as both Mendoza and Cioffi engaged in objectionable conduct that must be imputed to the ALU, thereby proving Amazon should have prevailed on its related objections.

i. The Lawsuit Confirms that Cassio Mendoza was an Officer and Agent of the ALU

During their testimony at the objections hearing, Mendoza and other ALU officers and agents did not fully disclose Mendoza's affiliation with the Union. *See, e.g.*, Tr. 4032:1; 4305:8-16; 5015:3-4. When asked by the ALU's lawyer if he is "active in the ALU" Mendoza said "yeah. I'm an active supporter of the Union." Tr. 5015:3-4. However, Mendoza admits in the Lawsuit's complaint that he was a member "of the initial Executive Board created at the time that the ALU was founded, or [was] appointed to fill a vacancy in an officer position, and served in that position at various times..." *See Paragraph 3 to Exhibits H, I.*

Had this information been disclosed during the hearing, the Hearing Officer would have been required to recognize Mendoza as an agent of the ALU, and thus his improper and objectionable acts would have been attributable to the ALU. Mendoza's agency status would have required Amazon's objections 10, 13, and 25 be sustained, and a rerun election ordered.

ii. The Lawsuit Confirms that Pasquale Cioffi was an Agent of the ALU

Pasquale Cioffi is a self-proclaimed "lead organizer" who personally "flipped 400-500 votes from no to yes." Tr. 4949:12-24; 4955:19-21. The Hearing Officer did not permit certain testimony or documentary evidence proving Cioffi to be an agent of the ALU. *See, e.g.*, Tr. 875:12-

879:8; 4209:10-15; 4772:14-4780:1; 4965:2-16. In the Hearing Officer’s report, she found that the evidence only supported a finding that Cioffi was an “ardent supporter” of the ALU and not an agent. *See Exhibit G.*

The official minutes from an ALU executive board meeting, however, shows that the ALU discussed that Spence “wanted to pay pat cioffi [sic] a \$600.00 stipend for organizing[.]” *See Exhibit 4 to Exhibits K, L.* The newly discovered evidence, that the ALU considered paying Cioffi for his organizing activities, counsels a different result as to his agency status because whether a person is paid by the union is another factor pointing towards agency status. *See Overnite Transp. Co. v. NLRB*, 104 F.3d 109, 113 (7th Cir. 1997) (“[s]imilarly, we have also considered whether the alleged agents ... received any pay from the union...”). Had the Hearing Officer attributed Cioffi’s improper and objectionable acts to the ALU, Amazon would have prevailed on its objections 16 and 18.

IV. CONCLUSION

In sum, newly discovered evidence—which existed at the time of the hearing, but the exact source and details were unknown to Amazon—warrants the reopening of the record pursuant to Section 102.65(e)(1). Such evidence is directly relevant to the Hearing Officer’s and Regional Director’s rulings and decisions, and would result in sustaining objections 3, 4, 5, 10, 13, 14, 16, 18, 21, and 25, thereby requiring a rerun election. Considering this newly discovered evidence and the foregoing authorities, it is essential, indeed required, that this newly discovered evidence, and any related testimony, be accepted into the record and given due consideration. Accordingly, Amazon requests that the record be reopened so that this highly critical evidence can be received and analyzed.

Respectfully submitted this 10th day of August 2023.

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was filed electronically with the NLRB and was served by electronic mail this 10th day of August 2023 to:

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